

June 16, 2023

VIA ECF

Hon. Ramon E. Reyes, Jr.
Magistrate Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: Wells Fargo Bank, National Association, as Trustee v. 366 Realty, LLC, et al.
Case No. 1:17-cv-03570-KAM-RER

Dear Judge Reyes:

The Firm represents Plaintiff Wells Fargo Bank, National Association, as Trustee, by and through its Special Servicer LNR Partners, LLC in this commercial mortgage foreclosure action. We write with respect to Defendant 366 Realty LLC's ("Borrower") continued discovery deficiencies. Specifically, we write with respect to Borrower's failure to produce all documents in response to Plaintiff's discovery requests and documents related to the indebtedness owed, as well as Borrower's failure to timely produce documents as ordered by the Court.

The Court previously determined that Plaintiff is permitted to foreclose the mortgage, with the amount of the indebtedness still to be determined. The Borrower disputes the Plaintiff's calculation of the loan indebtedness.

On March 22, 2023, Plaintiff provided Borrower's counsel with a detailed Affidavit of the amount owed, including the loan transaction history and an explanation of the loan calculations.

On March 28, 2023, Plaintiff served Borrower with Plaintiff's Request for Production of Documents (the "Request"). A response to the Request was due by April 17, 2023, 60 days ago. That Request included "all documents reflecting payments on the Loan which is the subject of this action, including the amount of any such payment and the date of such payment." To date, Plaintiff has not received a complete production containing that information.

By Order dated March 28, 2023, this Court set a deadline of May 12, 2023 by which the parties were to produce any additional documents and attempt to resolve the issue of what is owed.

On May 1, 2023, Borrower's counsel requested from Your Honor an extension of time "to produce to Plaintiff any additional documentation regarding the amount owed in this matter." [Dkt. No. 76]. By Order entered May 3, 2023, Your Honor extended the previously entered discovery deadlines by 30 days, thereby providing Borrower with an additional month [until June 12, 2023] to "produce the remaining outstanding documents."

On June 12, 2023, Borrower's counsel submitted to the Court an unsigned and possibly incomplete Affidavit of Joshua Mizrahi in Partial Opposition to Plaintiff's Motion to Fix the Indebtedness.¹ [Dkt. No. 83]. The Affidavit is missing pages, and there are issues with the exhibits. In summary, one is unable to determine what documents or facts Borrower is relying on to dispute Plaintiff's loan calculations. Borrower's counsel was advised of the issues with the Affidavit, but as of the date of this letter, no supplemental information has been provided.

As previously ordered by the Court, Plaintiff will serve by June 30, 2023 its Motion to Fix the Indebtedness. But by failing to comply with discovery requests focused on Borrower objections to the indebtedness calculation and by failing to comply with the extended Court deadline to produce documents, the Borrower is (i) making a math dispute more complicated, (ii) adversely impacting the efficient process established by the Court to resolve math calculations and (iii) prejudicing the Plaintiff in presenting its case.

Plaintiff respectfully requests that in the event Borrower fails to provide full and complete documentation and information during the time in which it is permitted to respond to this letter (in accordance with Local Civil Rule 37.3, by Friday, June 23, 2023), including all documents reflecting loan payments as stated in the Request, the Court enter an Order.

¹ On June 13, 2023, Your Honor entered an Order striking Dkt. No. 83 Affidavit/Affirmation in Partial Opposition to Computation filed by Joshua Mizrahi, as it is not related to any pending motion.

Specifically, Plaintiff respectfully requests that the Court enter an Order precluding the Borrower from relying on any additional documentation or information in this action outside of what it has provided to Plaintiff in response to the Request and the Court's Order of May 3, 2023, as of and including next Friday, June 23, 2023.

Respectfully yours,

/s/Joseph Lubertazzi, Jr.

Joseph Lubertazzi, Jr.

cc: Dan Blumenthal, Esq. (via ECF)